IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 19620 OF 2005

Date: 16.09.2005

BETWEEN:

Syed Ali Ahmed Hussaini

…. PETITIONER

Vs.

1. The Assistant City Planner, Circle No.1, Municipal Corporation of Hyderabad, Sardar Mahal, Hyderabad and another.

…. RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO. 19620 OF 2005

ORDER:

The petitioner alleges that his mother conveyed a portion of the residential house bearing municipal No.16-10-48 situated at New Malakpet Hyderabad. After obtaining necessary permission petitioner allegedly constructed residential building consisting of ground and first floor. He alleges that the officials of the Municipal Corporation of Hyderabad (MCH) surveyed the area for the purpose of construction of Fly-over at Nalgonda Cross-roads for widening the road. The petitioner was also served with a letter on 18.8.2005 to handover advance possession of the land, which would be affected by the widening of road and construction of Fly-over. Apprehending that the MCH might demolish the house, the present writ petition is filed.

Initially the petitioner sought for a Writ of Prohibition. It is the statutory duty of the MCH to provide good roads and ensure free flow of traffic on the roads. Therefore, when the MCH is discharging statutory duties a Writ of Prohibition is misconceived. Presumably for

this reason, the petitioner subsequently filed Miscellaneous Application being W.P.M.P.No.25861 of 2005 for amending the writ prayer, which is also allowed today. The petitioner was asked to handover advance possession of the affected portion i.e. about 267.44 Sq. yards of land in public interest. The petitioner did not give his consent. Therefore, the only remedy available to MCH to acquire the land in accordance with the provisions of law.

I n **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advance possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

Therefore, if the petitioner has not given his consent, it is always open for the MCH to initiate action under Section 147 of the Hyderabad Municipal Corporation Act, 1955 and acquire the property of the petitioner. In this case, the petitioner has allegedly not given his willingness/consent to cooperate with the MCH for construction of Fly-over/road-widening project. Needless to mention that the MCH has to initiate action under the provisions of Land Acquisition Act, 1894. Till then, the petitioner cannot be deprived of her right to enjoy the property.

The Writ Petition with the above observations is accordingly disposed of at the admission stage.

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(**V.V.S. RAO, J.)**

16th September, 2005

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